ARTICLE III. - FARMLAND PRESERVATION PROGRAM

DIVISION 1. - GENERALLY

Sec. 58-26. – Authority and Purpose of Article.

This Article is adopted pursuant to authority conferred by North Carolina General Statutes ("G.S.") §§ 106-735 through 106-744 and Chapter 153A.

The purpose of this Ordinance is to promote agricultural values and the general welfare of Buncombe County ("County or "the County") and, more specifically, to increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of agriculture, horticulture, and forestry; and decrease the incidence of legal disputes, such as nuisance actions between farm owners and their neighbors.

This Ordinance establishes a Voluntary Agricultural District ("VAD") Program, which provides the following benefits:

- Preservation and maintenance of agricultural areas in the County.
- Mitigation and prevention of conflicts and potential legal claims by notifying non-farming/agricultural neighbors and potential land purchasers that a participating farm may emit noise, dust, and odors.
- Enhancement of the farming and agricultural communities' voices in local government decisions that affect farmland.
- Conservation of open space and natural resources as the County's population increases and development expands.
- Voluntary participation in the program that that may be terminated at any time.

Sec. 58-27. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. **Advisory Board** means the Buncombe County Agricultural Advisory Board created pursuant to G.S. §106-739 to administer the Farmland Preservation Program.

2. **Chair** means chairperson of the Advisory Board.

3. **Farmland Preservation Staff** means Buncombe County Soil and Water Conservation District employees dedicated to Farmland Preservation Program.

4. **Voluntary Agricultural District** ("VAD") shall have the meaning defined in G.S. §106-738.

5. **Enhanced Voluntary Agricultural District** ("EVAD") shall have the meaning defined in G.S. §106-743.1.

6. **Board of Commissioners** means the Buncombe County Board of Commissioners.

7. **Conservation Agreement** means conservation agreement as same is defined in G.S. §121-35(1). A conservation agreement shall not prevent a landowner from conducting agricultural activities, including, but not limited to, the production of crops, forestry products, horticultural specialties, livestock, and livestock products. Permitted associated uses are sales and processing necessary and customarily incidental to the agricultural activities on-site which are in keeping with the purpose of the relevant VAD or EVAD program.

8. **Conservation Easement** shall, for the purposes of this Article, have the same meaning as "agricultural conservation easement" as it is defined in G.S. §106-744(b), and to the extent not inconsistent with G.S. §106-744, generally means a written agreement between a landowner and qualified conservation organization or public agency under which:

    a. A landowner agrees to maintain land for agriculture and/or forestry and restrict subdivision or non-farm development and other uses that are incompatible with commercial agriculture and forestry; and

    b. A conservation organization or public agency is responsible for monitoring the easement to ensure the terms of the easement are met.

Sec. 58-28—58-40. - Reserved

DIVISION 2. - AGRICULTURAL ADVISORY BOARD

Sec. 58-41. - Creation.

A County Agricultural Advisory Board is hereby established to implement the provisions of this Article.

Sec. 58-42. - Membership.

(a) Requirements. Requirements for Advisory Board membership shall be as follows:

(1) The Advisory Board shall be comprised of nine members. Additional members may be appointed to the Advisory Board in an *ex officio* capacity from the Soil and Water Conservation District ("BCSWD") Board of Supervisors, the Buncombe County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency, or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an *ex officio* capacity shall neither vote nor count toward quorum requirements.

(2) Each Advisory Board member, except those serving in an *ex officio* capacity, must be a Buncombe County resident.

(3) At least five of the nine members of the Advisory Board must be actively engaged in agriculture as defined in G.S.§106-581.1. To ensure that regional concerns are addressed and that the County is represented in its entirety, there must be at least one member from

each of the four regions of Buncombe County as designated below. This determination shall be made without reference to *ex officio* members.

a. Northwest: Sandy Mush, Leicester, and French Broad Townships

b. Northeast: Black Mountain, Swannanoa, Ivy, Flat Creek, Reems Creek, Beaverdam, and Haw Creek Townships

c. Southwest: Lower Hominy, Upper Hominy, Avery's Creek, and Hazel Townships

d. Southeast: Fairview, Broad River, Limestone, and Biltmore Townships

(4) Farmland Preservation Staff shall solicit applications for membership on the Advisory Board. Farmland Preservation Staff and the BCSWD Board of Supervisors shall review the applications and compile a list of qualified candidates. Members of the Advisory Board shall be selected and appointed by the Board of Commissioners from the list of qualified candidates.

(b) Tenure. Members of the Advisory Board may serve two consecutive three-year terms. If a member reaches this term limit, the member may be reappointed for two consecutive three-years terms only after one year has elapsed during which time the member has not served on the Advisory Board. The initial Advisory Board shall consist of three appointees for a term of one year each; three appointees for terms of two years each; and three appointees for terms of three years each

(c) Vacancies. Vacancies on the Advisory Board shall be filled by the Board of Commissioners for the remainder of the unexpired term through the process described in Sec. 58-42(a)(3).

(d) Removal. Any member of the Advisory Board may be removed by a majority vote of the Board of Commissioners for good cause.

Sec. 58-43. - Funding.

(a) Appropriations. Board of Commissioners may appropriate funds necessary for the Advisory Board to perform its duties. The Board of Commissioners may provide operating funds to BCSWD to assist the Advisory Board in the performance of its duties.

Sec. 58-44. - Procedure.

(a) Officers. The Advisory Board shall elect a Chair and Vice Chair at its first meeting of each calendar year. The Chair shall preside over all regular and special meetings of the Advisory Board. In the absence or disability of the Chair, the Vice-Chair shall preside and shall have and exercise all the powers of the Chair so absent or disabled. Additional officers may be elected as needed.

(b) Jurisdiction and procedures; supplementary rules. The jurisdiction and procedures of the Advisory Board are set out in this Article. The Advisory Board may adopt supplementary

rules of procedure not inconsistent with this Article or with other provisions of law.

(c) Meetings.

(1) Frequency. Meetings of the Advisory Board shall be held at the call of the Chair and at such other times as the Advisory Board in its Bylaws may specify. The Chair shall call a minimum of one meeting every two months.

(2) Notice. The date, time, and location for each meeting shall be published no less than one week before the meeting. The Chair, or designee, shall notify each member of the Advisory Board of the meeting by electronic mail or by postal mail and by posting a copy of the notice on the principal bulletin board of the Advisory Board, on the door of its usual meeting room, or on the building in an area accessible to the public. A copy of the notice shall also be delivered to the Clerk to the Board of Commissioners for media publication and delivery to interested parties that have requested to receive such notices. All meetings shall be open to the public.

(3) Quorum. Five members of the Advisory Board shall constitute a quorum. The Advisory Board shall not transact business in the absence of a quorum.

(d) Voting.

(1) Each member, including the Chair, has a duty to vote on each issue properly brought before the Advisory Board unless excused by a majority of members present. The Advisory Board may excuse a member from voting, upon a showing of conflict of interest or potential conflict of interest such as his/her own financial interest or his/her official conduct or on matters on which the member is prohibited from voting under G.S. §14-234. Refusal or failure to vote (without having been excused by the Chair) shall be recorded as an affirmative vote.

(2) Members must be present to vote.

(3) A concurring vote of a majority of the members of the Advisory Board shall be required to pass upon any matter on which it is required to act under this Article.

(e) Records. The Advisory Board, or its designee, shall keep minutes of the proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall maintain records of its examinations and other official actions. Minutes of the Advisory Board shall be filed in the BCSWD office and shall be a public record. Advisory Board minutes and records shall be retained in accordance with the Buncombe Conty Records Retention policy.

(f) Administrative services. The BCSWD Administrative Coordinator and Farmland Preservation Staff shall provide administrative support to the Advisory Board including recordkeeping, correspondence, application of procedures under this Article, and such other services the Advisory Board requires to fulfill its duties.

Sec. 58-45. - Duties.

It shall be the duty of the Advisory Board to advise the Board of Commissioners or the agency or office to which the Board of Commissioners has delegated the authority to oversee County land-use planning, on the status, progress, and activities of the County's agricultural districts and conservation easement program and to coordinate the formation and maintenance of agricultural districts and conservation easements with the County's land-use planning activities and the Buncombe County 2043 Comprehensive Land Use Plan.

The Advisory Board shall:

(1) Review and approve or deny landowner applications for enrollment of qualified farmland, horticultural land, or forestland in either VAD or EVAD and applications for conservation easements;

(2) Make recommendations concerning the establishment and modification of VAD or EVAD or conservation easements;

(3) Conduct public hearings;

(4) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the County that will affect VAD and EVAD and conservation easements;

(5) Review and make recommendations concerning proposed amendments to this Article;

(6) Develop, maintain, and update a countywide farmland protection plan as defined in G.S. § 106-744(e) for presentation to the Board of Commissioners;

(7) Study additional methods for protection of farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of Commissioners;

(8) Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the Board of Commissioners; and

(9) Develop and implement methodology for prioritization of projects.

Secs. 58-46—58-55. - Reserved.

DIVISION 3. - CONSERVATION AGREEMENTS FOR VAD/EVAD

Sec. 58-56. - Application for and certification for qualifying farmland in a VAD or EVAD.

(a) Requirements - certification as qualifying farmland. To secure County certification as a qualifying farmland, a farm must:

1. Be used for "bona fide farm" purposes, as that term is defined in G.S. §160D-903(a).

2. Be managed in accordance with the United States Department of Agricultural Natural Resource Conservation Service defined erosion control practices that are applicable to highly erodible land.

3. Consist of at least 50 contiguous acres of qualifying farmland or two or more qualifying farms consisting of a total of at least 50 acres located within one mile of each other, which collectively will create a district with each said farm located within one mile of any other such farm. An agricultural district may be enlarged by adding qualifying farms after initial formation to create distinct district regions.

4. Be the subject of a conservation agreement between the County and the landowner that prohibits nonfarm use or development of such land for a period of at least ten (10) years, except for the creation of not more than three lots that meet applicable county and municipal zoning and subdivision regulations. The form of the conservation agreement shall be approved by the Advisory Board. The conservation agreement shall be suited to district type (VAD or EVAD) as designated by the landowner(s) to sustain, encourage, and promote agriculture, must be executed by the landowner(s), and be reviewed and approved by the Advisory Board. The Conservation Agreement for an Enhanced Voluntary Agricultural District must be recorded with the Buncombe County Register of Deeds as required by G. S. §121-41.

(b) Application Procedure - A landowner, or landowners, may apply for certification of qualifying farmland for inclusion in either the Voluntary Agricultural District or the Enhanced Voluntary Agricultural District program. Such application shall be made to the Chair of the Advisory Board or Farmland Preservation Staff and must designate whether the application is for Voluntary Agricultural District status or Enhanced Voluntary Agricultural District status. The application and agreement shall be provided by the Advisory Board or Farmland Preservation Staff.

(c) Application Review Process. Farmland Preservation Staff shall review applications, in conjunction with the following County departments to determine eligibility:

- The County Planning Department
- The County Permit and Inspections Department.
- Buncombe County Soil and Water Conservation District.

(d) Decision by the Advisory Board; notification of applicant. Within 90 days of receipt of the reviewed applications, the Advisory Board shall meet and make a determination regarding each application. Farmland Preservation Staff shall notify each applicant by mail of approval or denial within (15) days of the decision.

(e) Appeal. If the application is not approved by the Advisory Board, the applicant shall have 30 calendar days to appeal the decision to the Board of Commissioners. Such appeal must be made in writing. The decision of the Board of Commissioners is final.

(f) Encouragement of VAD or EVAD**.** The County may take such action through the Advisory Board or other body or individual to encourage the formation of VAD or EVAD and to further their purposes and objectives through a public information program, or such other means as the County deems appropriate and necessary, to reasonably inform landowners of the farmland preservation program or such other means as the County deems appropriate.

Sec. 58-57. -, Transfer, Renewal, Revocation, and Enforcement of VAD and EVAD.

(a) Transfer.

(1) Transfers of land in a Voluntary Agricultural District due to death of the landowner(s), sale, or gift shall not terminate the Conservation Agreement if all new landowner(s) ratify the Conservation Agreement and affirm, on a supplemental application, updated information demonstrating that the enrolled land still qualifies for enrollment under subsection 58-56(a). If there are water or sewer assessments held in abeyance by this Article, and the new owner(s) decline in writing to accept liability for those assessments when land is withdrawn either voluntarily or involuntarily from the VAD, the Conservation Agreement shall be terminated. Termination shall be undertaken pursuant to the provisions of subsection 58-57(c).

(2) Transfers of land in an Enhanced Voluntary Agricultural District due to death of the landowner(s), sale, or gift shall not terminate the Conservation Agreement. The Conservation Agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the conservation agreement.

(b) Renewal.

(1) VAD. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners may decline to renew any Conservation Agreement unless this Article or its authorizing legislation has been repealed.

(2) EVAD. A Conservation Agreement for an enhanced district shall renew automatically for a term of three years, unless either the Advisory Board or the landowner gives written notice to the contrary at least thirty (30) days prior to the termination date of the Conservation Agreement.

(c) Termination.

(1) VAD. A landowner of qualifying farmland within a VAD may terminate the Conservation Easement by providing at least thirty (30) days notice to Farmland Preservation Staff. The Advisory Board may terminate the conservation agreement based on noncompliance

by the landowner, subject to the same provisions as contained in subsection 58-56(a) for appeal of denials. Termination shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall terminate any Conservation Agreement prior to its expiration. If the Advisory Board terminates a Conservation Agreement for cause, the landowner shall have the appeal rights set forth in subsection 58-56(a).

(2) EVAD. A Conservation Agreement for land within an enhanced district is irrevocable for a period of ten (10) years. If, at the end of the term, the Conservation Agreement is not automatically renewed or renewed voluntarily by the landowner, then a notice of termination shall be documented in the County land record system sufficient to provide notice that the land has been withdrawn from the Enhanced Voluntary Agricultural District Program.

(d) Enforcement.

(1) VAD Enforcement. The Advisory Board may terminate the same Conservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in subsection 58-56(a) for appeal of denials. Such termination shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners terminate any Conservation Agreement prior to its expiration.

(2) EVAD Enforcement.

a. Monitoring. To protect conservation values of EVAD properties, BCSWD may conduct monitoring and maintain detailed records of inspections, problems on the property, and actions taken to address such problems.

b. Enforcement. Enforcement of the Conservation Agreement may be through an action for injunctive relief and/or damages in the General Courts of Justice for Buncombe County, North Carolina. The County may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. If the Advisory Board terminates the Conservation Agreement for cause, the landowner shall have the appeal rights set forth in subsection 58-56(a) of this Article. The right to terminate program benefits is in addition to any legal rights that the County may have under either this Article or the terms of the Conservation Agreement. The County may seek costs of the action including reasonable attorney fees if such a provision is incorporated into the Conservation Agreement. A notice of termination shall be recorded in the County land record system sufficient to provide notice that the land has been withdrawn from the Enhanced Voluntary Agricultural District program.

Sec. 58-58. - Public hearings regarding condemnation and rezoning of farmland.

(a) Purpose. Pursuant to G.S. § 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland or rezone such land within a VAD or EVAD until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation or rezoning.

(b) Notice. Upon receiving a request to hold a hearing on the proposed condemnation or rezoning, the Chair Advisory Board, or designee, shall provide public notice within ten (10) business days of the request and in the same notice inform the public of a hearing on the proposed condemnation or rezoning action, to be held within thirty (30) days of the receipt of the request.

(c) Procedure. The hearing procedure shall be as follows:

(1) Review. The Advisory Board shall review:

A. Whether the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and

B. Whether there are alternatives to the proposed action that have less impact and are less destructive to the agricultural activities of the VAD or EVAD within which the proposed action is to take place.

(2) Consultation. The Advisory Board shall consult with the County Cooperative Extension Service, USDA Natural Resources Conservation Service, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Advisory Board's review of the proposed action. Land value may not be a factor in the selection between properties under consideration for the proposed action.

(3) Preliminary report. Within five (5) days after the public hearing, the Advisory Board shall prepare a preliminary report of its findings and recommendations concerning the proposed action. The preliminary report shall be made available to the public for comment.

(4) Public comment. There shall be a period of seven (7) days for public comment on the preliminary report. At the conclusion of the public comment period, the Advisory Board shall review the public comments for at least one business day before preparing a final report.

(5) Final report. The Advisory Board shall submit a final report of its findings and recommendations concerning the proposed action to the decision-making body of the agency proposing the acquisition by condemnation or rezoning action.

(6) Timeframe. The total period, from the day that a request for hearing has been received to the day that a final report is issued, shall not exceed forty-five (45) days.

(d) Abeyance. The state, local government agency, or governmental unit proposing to acquire property by condemnation or rezoning shall not formally initiate a condemnation or rezoning until one-hundred twenty (120) days after the date the local Agricultural Advisory Board submits its final report to the agency or unit.

(e) The Board of Commissioners shall condemn farmland within an Agricultural District only as a last resort if it is considering condemnation for County purposes.

Sec. 58-59. - Waiver of water and sewer assessments.

(a) Purpose of section. The purpose of this section is to mitigate the financial impact of water and sewer assessments on farmers.

(b) Procedure. The waiver procedure shall be as follows:

(1) Landowners belonging to VAD or EVAD shall not be assessed for, or required to connect to, County water and/or sewer systems.

(2) Water and sewer assessments shall be held in abeyance, without interest, for farms inside a VAD or EVAD, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(3) When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(4) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(5) Assessment procedures followed under G.S. § 153A-185 et seq. shall conform to the terms of this Article with respect to qualifying farms that entered into preservation agreements while such Article was in effect.

(6) Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under G.S. § 153A-201.

(c) Conflict with County water and/or sewer system construction and improvements grants. To the extent that this section conflicts with the terms of federal, state, or other grants under which County utility systems are constructed, this section shall not apply. This section shall not apply to utilities that are not owned by the County unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Article shall apply.

Sec. 58-60. - Notice of proximity to a Voluntary or an Enhanced Voluntary Agricultural District.

(a) Purpose. The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between VAD or EVAD participants and nonfarm landowners in proximity to VAD or EVAD.

(b) VAD or EVAD established. The County has established VAD or EVAD for farmland preservation to protect and preserve agricultural lands and activities. These VAD or EVAD have been developed and mapped by the County to inform all purchasers of real property, located within one-half mile of a VAD or EVAD, that certain agricultural activities, including, but not limited to, pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities may take place in these VAD or EVAD any time during the day or night. Maps and information on the location and establishment of these VAD or EVAD can be obtained from the County planning and development office.

(c) Notification generally. The Advisory Board, in cooperation with the County, shall provide notification to property owners, residents and other interested parties in and adjacent to any designated agricultural district. The purpose of such notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district that farming and agricultural activities may take place in this VAD or EVAD any time during the day or night. These activities may include, but are not limited to pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities.

(d) Limit of liability. In no event shall the County or any of its officers, employees, members of the Advisory Board, or agents be held liable for damages arising from any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this Article.

(e) No cause of action. In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or VAD or EVAD as defined in this Article.

(f) Exclusion of Liability

1) In no event shall the County or any of its officers, employees, members of the Advisory Board, or agents be held liable for damages arising from any misfeasance, malfeasance, or nonfeasance in connection with the duties or obligations imposed by this ordinance.

2) In no event shall any cause of action arise out of the failure of an individual researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or Voluntary Agricultural District as defined in this Ordinance.

(g) Types of notification. Notification shall be provided as follows:

(1) Signs identifying approved VAD or EVAD may be placed along major roads. Signs may not be placed within the right-of-way of any state-maintained road.

(2) Maps identifying approved VAD or EVAD shall be provided to Buncombe County offices including: the Register of Deeds, Permits and Inspections, the BCSWD, the Cooperative Extension, Land Records, and any other office or agency the Advisory Board deems necessary.

(3) The following notice, of a size and form suitable for posting, shall be posted and available for public inspections in the Office of the Register of Deeds, and any other office or agency the Advisory Board deems necessary:

> Notice to real estate purchasers in Buncombe County of each voluntary agricultural district or enhanced voluntary agricultural district for farmland preservation. Buncombe County has established VAD or EVAD to protect and preserve agricultural lands and activities. These VAD or EVAD have been developed and mapped by the County to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, burning, and other common farming activities may occur in these VAD or EVAD any time during the day or night. Maps and information on the location and establishment of these VAD or EVAD can be obtained from the North Carolina Cooperative Extension Service office, the Soil and Water Conservation District office, the office of the Register of Deeds, the County Planning office, or the Natural Resources Conservation Service office.

(4) Geographic information system. Voluntary and Enhanced Voluntary Agricultural Districts shall be mapped in the County geographic information system.

A. The Buncombe County Tax Department/GIS Mapping shall maintain maps of approved agricultural districts within the Buncombe County Geographic Information Mapping System Database as well as an overlay for all tracts located within one-half (1/2) mile of the property line of any tract of land enrolled in a voluntary agricultural district.

B. The mapping information shall provide notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one half mile of an agricultural district. This mapping information may be viewed by accessing the Buncombe County GIS website.

Sec. 58-61. - State agency notification.

(a) The Advisory Board, or its designee, may consult with the North Carolina Cooperative Extension, BCSWD, the Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Advisory Board, or its designee, deems necessary to the proper conduct of its business.

(b) A copy of this Article shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the North Carolina Cooperative Extension, and the BCSWD after adoption. At least once a year the County shall submit a written report to the Commissioner of Agriculture and Consumer Services, including the status, progress and activities of the County's farmland preservation program, including VAD or EVAD information regarding:

(1) Number of landowners enrolled;

(2) Number of acres enrolled;

(3) Number of acres certified during the reporting period;

(4) Number of acres not certified during the reporting period;

(5) Number of acres for which applications are pending;

(6) Municipalities with which memorandums of understanding have been signed;

(7) Municipalities with which memorandums of understanding are no longer in effect;

(8) Municipalities that have adopted this Article for the purpose of the County enforcing this Article within their corporate boundaries;

(9) Copies of any amendments to this Article or memorandums of understanding signed with municipalities; and

(10) Any other information the Advisory Board deems useful.

(c) Copies of the reports cited in subsection (b) of this section may be sent to:

(1) North Carolina Department of Transportation;

(2) Secretary, North Carolina Department of Commerce;

(3) Asheville Area Chamber of Commerce; and

(4) Any other entity, the Advisory Board, or its designee, deems appropriate.

Sec. 58-62. - Additional benefits for Enhanced Voluntary Agricultural Districts.

(a) Land enrolled in the EVAD program is entitled to all benefits available under the VAD program and the following additional benefits:

(1) Sale of non-farm products. Landowners participating in EVAD may receive up to 25% of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from County zoning regulations under G.S. § 153A-340(b). A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed 25% of its gross sales. The County may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

(2) Agricultural cost share program. Landowners participating in EVAD are eligible under G.S. § 143-215.74(b) to receive the higher percentage of cost-share funds for the

benefit of that farmland under the agriculture cost share program established pursuant to part 9 of article 21 of chapter 143 of the General Statutes to benefit that farmland.

(3) Priority consideration. State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in EVAD.

(4) Utility assessment waiver. As provided in section 58-59, waiver of all County utility assessments in addition to waiver of water and sewer assessments is available to all participants in EVAD.

Sec. 58-63. – County land use planning.

(a) Duty of Advisory Board. It shall be the duty of the Advisory Board to advise the Board of Commissioners, or the agency or office to which the Board of Commissioners delegates authority to oversee County land use planning, on the status, progress, and activities of the County's Voluntary Agricultural District program and Enhanced Voluntary Agricultural District program and to also coordinate the formation and maintenance of VAD and EVAD with the County's land use planning activities and the County's land use plan.

(b) Posting of Notice. The following notice of a size and form suitable for posting shall be posted in the Agriculture and Land Resources office and any other office or agency the Advisory Board deems necessary:

> Buncombe County has established Agricultural Districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, prescribed burning, and other common farming activities may occur in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from Buncombe County Cooperative Extension, Buncombe County Planning and Zoning Department, Buncombe County Tax Department/GIS Mapping.

(c) Areas where VAD and EVAD are not permitted. At such time as the County might establish designated growth corridors, VAD and EVAD shall not be permitted in those designated growth corridors, as delineated on the official County planning map, without the approval of the Board of Commissioners. VAD and EVAD located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the Board of Commissioners.

Sec. 58-64. – Legal provisions.

(a) Severability. If any section, subsection, clause, phrase, or portion of this Article is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

(b) Conflict with other ordinances and statutes. The provisions of this Article are subordinate to the provisions of all other Buncombe County ordinances, and federal and state statutes, which shall govern in the event of a conflict.

(c) Remedy for noncompliance. The sole remedy for a noncompliant land use shall be termination of the Conservation Agreement and removal of the non-qualifying land from the Buncombe County Voluntary Agricultural District program. Recreational use of land that does not interfere with agricultural uses as defined in G.S §106-581.1 shall not be considered non-compliant with this Article.

(d) Amendments. This Article may be amended by the Board of Commissioners.

(e) All policies, forms, and resolutions referenced in this Article shall be available for public review at the BCSWD office.

(f) Notice. A copy of this ordinance, once adopted, shall be recorded with the Commissioner of the N.C. Department of Agriculture and Consumer Services.

Secs. 58-65—58-70. - Reserved.

DIVISION 4. - AGRICULTURAL CONSERVATION EASEMENT PROGRAM

Sec. 58-71. - Purpose.

(a) General. The preservation of the County's best agricultural land in a manner that directs and accommodates growth and development is a high priority for the residents of the County. To this end the County establishes the following goals:

(1) To protect and conserve those soils in the County best suited to agricultural uses;

(2) To identify and harmonize policies of government at all levels which may conflict with the goal of protection of farmland;

(3) To reduce land use conflicts between agricultural and other land uses; and

(4) To promote agriculture as an integral part of the County's economy.

These program guidelines contain policies and procedures for administering an Agricultural

Conservation Easement Program.

(b) Duties and responsibilities of the Advisory Board. The Advisory Board shall act on behalf of the County in administering the Agricultural Conservation Easement Program within the Farmland Preservation Program. The planning department shall make recommendations to the Advisory Board on the selection of properties for purchase, lease, and/or donation and on the development of purchase and lease priorities. A Buncombe County staff attorney or BCSWD contracted attorney shall draft and approve as to form all documents necessary to purchase, lease, and/or accept donations of conservation easements and perform any other such acts necessary for the implementation of this program. The Advisory Board and Farmland Preservation Staff shall administer this program utilizing the financial resources provided by the Board of Commissioners.

Sec. 58-72. - Purchase of conservation easements.

(a) General. The County may purchase conservation easements in agricultural, forest and/or open space lands. All applications for the purchase of conservation easements shall be evaluated based upon the farmland preservation ranking system as described in Section 58-79. Conservation Easements may be purchased in accordance with the ranking of farm properties and the availability of allocated funds. Compensation for Conservation Easements shall be based on the Advisory Board's determination of the difference between fair market value and agricultural or open space value appraisals. The purchase price will be subject to negotiation.

(b) Description. The purchase of a Conservation Easement is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The Conservation Easements shall be held in public trust by the County or transferred to a private nonprofit conservation organization. Conservation Easements shall be perpetual and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.

(c) Authority.

(1) Conservation Easement Grants. BCSWD acts as a department of Buncombe County. Buncombe County authorizes the BCSWD Director and designated staff to:

A. Apply for grant funding on behalf of the County;
B. Execute conservation easement applications;
C. Use Buncombe County's tax ID and DUNs number to apply for conservation easement grant funding on behalf of Buncombe County.
D. Enter into cooperative agreements with the United States Department of Agriculture Natural Resource Conservation Service, North Carolina Department of Agriculture and Consumer Sciences Agricultural Development & Farmland Preservation Trust Fund, and other agencies to facilitate easement purchase.

(2) Conservation Easement Closing. The BCSWD Director is authorized to sign necessary conservation easement closing documents on behalf of BCSWD conservation easement projects.

(d) Minimum eligibility criteria. The agricultural and/or open space land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists and be in agricultural and/or open space use.

(e) Application procedure. Interested landowner(s) must submit an application to Farmland Preservation Staff or its designee on behalf of Buncombe County.

(f) Review and ranking of applications. Farmland Preservation Staff will rank each application using the soil assessment, site assessment, and conservation criteria in the farmland preservation ranking system. After ranking the applications, Farmland Preservation Staff will prioritize applications and make recommendations to the Advisory Board and the BCSWD Board of Supervisors.

(g) Acquisition.

(1) Due Diligence. Farmland Preservation Staff shall:

A. Obtain a survey, environmental assessment, and baseline documentation report to document the conditions of the property.

B. Obtain a conventional conservation easement appraisal or Uniform Appraisal Standards for Federal Land Acquisition's Yellow Book Format appraisal on tracts considered for conservation easement acquisition. The purpose of the appraisal is to determine the value of the property before the placement of a conservation easement, and the value of the property after the encumbrance of a conservation easement. The difference between the two values indicates the change in value due to the encumbrance of a conservation easement. Payment for these appraisals will be part of the County's project transaction costs.

C. Review the easement process and the appraisal value with the landowner.

(2) Title Investigation and Subordination. An attorney shall investigate title to each property for which the BCSWD intends to acquire title or a conservation easement. The title investigation will ensure that BCSWD is negotiating with the legal owner(s) and uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect title to the property or the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the conservation easement or significantly undermine the conservation values on the property must be discharged or properly subordinated to the conservation easement.

(3) Closing. A licensed attorney shall prepare appropriate legal documents covering titles, deeds, surveys, and subordination agreements and the closing will be scheduled. At closing, the owner will execute appropriate full warranty documents conveying conservation easements to the County in perpetuity. After proper recordation of necessary instruments, the landowner shall receive the negotiated payment for title to the property or the easement. The County may bear all closing and related costs.

(h) Public disclosure. During negotiations concerning the purchase of conservation easements, information shall remain confidential, as allowed by law. Following a purchase agreement, information may be made public as provided by law.

Sec. 58-73. - Donation of conservation easements.

(a) General. The Board of Commissioners may accept a voluntary donation or devise of conservation easements.

(b) Description. The donation of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the County or transferred to a private nonprofit conservation organization. Conservation easements shall be perpetual and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.

(c) Minimum eligibility criteria. The agricultural and/or open space land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists and be in agricultural and/or open space use.

(d) Application procedure. Guidance documents for donating conservation easements are housed at the BCSWD office. Upon contact by a landowner, a meeting will be set with an attorney representing BCSWD and a member of the Advisory Board, or its designee, to discuss donation of conservation easements.

(e) Review and ranking of applications. The applications shall be ranked by Farmland Preservation Staff and the County Planning Department. Farmland Preservation shall rank each of the applications using the soil assessment and the conservation criteria in the farmland preservation ranking system. The County Planning Department which shall rank each of the applications using the site assessment criteria of the farmland preservation ranking system. After the applications have been ranked, Farmland Preservation Staff will prioritize applications and make recommendations to the Advisory Board.

(f) Acquisition of easements is described in section Sec. 58-72g

(g) Public disclosure for conservation easement acquisition is described in Sec. 58-72h

Sec. 58-74. –Baseline Documentation Reports and Easement Monitoring

(a) **Baseline documentation purpose**. This policy establishes the procedure for the collection, compilation, and storage of baseline documentation for conservation easements managed by the BCSWD. The BCSWD must have baseline documentation for all properties it protects. This information establishes the condition of a property at the time of acquisition, allowing comparisons with findings during subsequent monitoring events. Such information is

also required by the IRS for landowners seeking a federal income tax deduction for conservation easement donations. Generally, the BCSWD will collect baseline information for the conservation easement donor. Baseline documentation is important in defending conservation properties from threats, including conservation easement violations. The baseline documentation may be relied upon during litigation to establish the condition of a property prior to a conservation easement violation. BCSWD shall collect and store all baseline documentation for conservation easements in a manner that maximizes effectiveness for easement enforcement purposes.

(1) Baseline data collection. The volume and specificity of the information included in the baseline documentation report may vary depending on the terms of the easement and the conservation objectives for the property. Baseline data will be collected by BCSWD staff or contractors. Baseline data collected during a site visit will generally include:

a. Boundary photos, photos of special features, and photos of structures and other improvements;

b. Global Positioning System (GPS) data and locations on a map of each photo, special feature, structure, and other improvements;

c. Other natural resource information documenting the conservation values of the site such as soil maps, land cover data, natural community descriptions, topographic map, flora and fauna lists, land use history, ecological data, conservation and management plans, property photos with a photo point location map and descriptive caption, and other relevant agricultural or forestry information.

(2) Baseline data compilation and storage. One original copy of the baseline data will be kept on file with the Buncombe County in secure storage and two digital copies shall be maintained in separate locations for security in accordance with the Farmland Preservation Program Record Policy. A copy also will be provided to the landowners. The landowner(s) shall review the baseline documentation prior to the closing of the sale and purchase of the Conservation Easement. The landowner(s) shall certify review of the baseline documentation by signing the Acknowledgement of the Baseline Document at the closing of the sale and purchase of the Conservation Easement.

(b) **Monitoring of conservation easements**. To protect conservation values and maintain safety of its conservation easement properties, BCSWD shall conduct annual monitoring and maintain detailed records of inspections, problems on the property, and actions taken to address such problems.

(1) Monitoring personnel. Supervision of monitoring is the responsibility of the

Farmland Preservation Staff. The BCSWD Director may delegate monitoring duties to any of the BCSWD soil conservationists or consultants if needed.

(2) Monitoring procedure. Comprehensive monitoring shall be performed annually, in accordance with the protocols outlined in the Farmland Preservation Program Monitoring Guidelines and Protocols Policy. Additional site visits may be conducted as needed throughout the year.

(3) Recordkeeping. Monitored activities will be recorded on the Buncombe County Soil and Water monitoring form. Monitoring reports, including the monitoring form, maps, and photos from the visit will be maintained by Farmland Preservation Staff in accordance with the Buncombe County Records Retention Policy. All monitoring reports shall be kept on file in the Farmland Preservation staff's office in accordance with the Farmland Preservation Program Records Retention Policy.

(4) Revising the policy. From time to time the Monitoring Policy may be revised for the following reasons, to correct errors or clarify ambiguities in order to comply with BWSWD standards and practices.

Sec. 58-75. –Tax Code and Appraisal Considerations.

(a) BCSWD shall inform each landowner of tax considerations and possible benefits associated with the Conservation Easement by sending a Conservation Easement Appraisal and Tax letter and appraisal requirements relevant to the transaction. BCSWD will not knowingly participate in transactions where it has significant concerns regarding a tax benefit claimed by the landowner. Any determination of the value of the donation is the responsibility of the donor. Conservation easement appraisals are complex and subject to special rules with which the appraiser should be familiar. Seeking tax benefits from the donation is the responsibility of the donor, not Buncombe County.

Sec. 58-76. - Conservation easement violations.

(a) Conservation easement violations.

(1) Purpose. This policy establishes the procedure the BCSWD shall follow in the event of an easement violation and the imposition of an appropriate enforcement action. BCSWD is legally obligated to enforce the terms of its conservation easements. In addition to protecting the conservation values of the land, enforcement is necessary to generate public confidence in BCSWD's mission to conserve land, uphold its legal authority to enforce the terms of its conservation easements, and to maintain the ability to accept future donations of easements and its tax-exempt status. BCSWD may discover a violation on a monitoring visit, through a neighbor or other interested party,

or during informal observation. BCSWD's response to a violation shall be commensurate with and proportional to the violation.

(2) Procedures for enforcement.

(a) If a potential violation is discovered or reported, Farmland Preservation Staff shall review the Conservation Easement and conduct an investigation. If Farmland Preservation Staff concludes that a violation of the Conservation Easement has occurred and/or a violation is on-going, staff shall refer to the Farmland Preservation Program Violation Policy to address the violation and pursue remedies.

(b) If the BCSWD Director determines that a violation requires legal action, Farmland Preservation staff shall confer and coordinate with Buncombe County Attorney's office to:

1. Determine if there are adequate funds to cover legal expenses;
2. Retain and prepare the competent legal counsel;
3. Actively participate in the formulation of the case;
4. Use documentation of the violation, baseline and monitoring documentation, and experience on the property to its fullest advantage.

(b) There may be occasions when actions (i.e., unauthorized timber harvest, construction, etc.) by a landowner or third party can or will result in a serious threat to the conservation values of the property. To protect the conservation values in such cases, the action(s) must be stopped immediately. If an attempt to rectify the situation by working with the landowner or responsible party is unsuccessful, BCSWD may use the following protocol for such situations:

(1) Farmland Preservation Staff will ensure the action is a legitimate violation of the conservation Easement;
(2) Notify the BCSWCD Director;
(3) Inform the Soil and Water Board of the situation at the next board meeting; and
(4) Seek an injunction and attempt to re-establish productive communication with the landowner or responsible party.

Sec. 58-77. - Farmland preservation ranking system.

The farmland preservation ranking system will prioritize applications received from landowners seeking sale, lease, or donation of their conservation easements. The system can be used for evaluating conversion impact. Site and soil assessment criteria shall be maintained by the Advisory Board. The system consists of two parts:

(1) Site assessment criteria. The focus of this system is to determine suitability of a particular farm parcel for conservation. Each factor is assigned a point value based on its relative importance to other factors.

(2) Soil assessment criteria. All soils in the County have been rated and placed into groups ranging from the most productive farmland to the least productive. A relative value has been determined for each group.

To determine the total value of a given parcel, the values for the soil assessment and site assessment criteria are added together.

Site assessment criteria include but is not limited to:

(1) Tract size
(2) Percentage of tract in agricultural and/or open space use
(3) Proximity to public water and sewer
(4) Probability of conversion
(5) Proximity to planned development
(6) Proximity to land under conservation easement or conservation agreement
(7) Historic, scenic, environmental qualities
(8) Land stewardship activities

Sec. 58-78. - Reserved.